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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,355	03/09/2004	Daijiro Nakamura	66042-9344-02	2283
23409	7590	06/29/2005	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			LORENCE, RICHARD M	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/796,355	NAKAMURA ET AL.
	Examiner Richard M. Lorence	Art Unit 3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 10-16 is/are allowed.
- 6) Claim(s) 1-7, 17, 19 and 21 is/are rejected.
- 7) Claim(s) 8, 9, 18 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/16/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This is the first Office action on the merits of Application No. 10/796,355 filed on March 9, 2004. Claims 1-21 are currently pending.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on March 5, 2004. It is noted, however, that applicant has not filed a certified copy of the Japanese application as required by 35 U.S.C. 119(b).

### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing.

### ***Double Patenting***

Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6,702,090. Although the conflicting claims are not identical, they are not patentably distinct from

each other because claim 1 of the present application and each of claims 4, 10 and 25 of the '090 patent are directed to a spindle lock including the combination of first and second locking members, a wedge, a delay spring and a detent arranged together and functioning in the same manner. The inter-engaging teeth of claim 2 are recited in claim 11 of the patent; the alignment member of claim 3 is recited in claim 44 of the patent; the limitations of claims 4 and 5 correspond to those of claims 45 and 46 of the patent; the second wedge and synchronizing member are recited in claim 28 of the patent; and the action of the spring as set forth in claim 7 is set forth in claim 2 of the patent.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura (US 5,732,805 A) which shows a spindle lock for a power tool including the motor shaft 11 and spindle 10 drivingly connected by the planetary gearing 12 and supported by a housing. The spindle lock includes the first locking member 16 with a first locking surface 26 and a second locking member 21 with a second locking surface 25. The ball 41 and rough surface 40 of the torque limiter described at column 4, lines 13-18 correspond to the claimed drag element and drag surface.

***Allowable Subject Matter***

Claims 10-16 are allowed.

Claims 8, 9, 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on November 16, 2004 has been considered by the examiner. The "Milwaukee Electric Cordless 2.4 Volt Screwdriver" referred to in the list of "other prior art" was apparently never received as there is no evidence of an artifact folder containing a cordless screwdriver.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard M. Lorence whose telephone number is (571) 272-7094. The examiner can normally be reached on Mondays through Fridays from 9:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on (571) 272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Richard M. Lorence  
Primary Examiner  
Art Unit 3681

Lorence/rml